

STATE OF MICHIGAN
COURT OF APPEALS

GARY FRAZIER,

Petitioner-Appellant,

v

CITY OF WARREN, WARREN POLICE
DEPARTMENT and WARREN POLICE & FIRE
CIVIL SERVICE COMMISSION,

Respondents-Appellees.

UNPUBLISHED

March 20, 2001

No. 218979

Macomb Circuit Court

LC No. 98-000421-AA

Before: Murphy, P.J., and Hood and Cooper, JJ.

PER CURIAM.

Petitioner, a sergeant with the Warren Police Department, was charged with five counts of misconduct and suspended without pay for forty-five days. Following a hearing before the Warren Police & Fire Civil Service Commission, four of the five counts of misconduct were dismissed and petitioner's suspension was reduced to twenty days. Petitioner appealed the commission's decision to the circuit court, which affirmed in a May 26, 1998 opinion and order. We granted petitioner's delayed application for leave to appeal. We vacate the opinion and order of the circuit court and remand for further proceedings.

We agree that the circuit court erred in failing to set aside its opinion and order after petitioner filed a motion for relief from the ruling. The record indicates that on May 5, 1998 a substitute circuit judge¹ issued an order, pursuant to the parties' stipulation, authorizing an in camera inspection of the sealed commission closed deliberation record and holding in abeyance the filing of briefs pending review of the sealed deliberation record. Although it appears that the presiding judge was unaware of this order at the time she issued her decision, under the circumstances, the judge abused her discretion by not setting aside her decision so as to allow the parties to proceed in accordance with the prior order. *Hadfield v Oakland Co Drain Comm'r*, 218 Mich App 351, 354-355; 554 NW2d 43 (1996); *Altman v Nelson*, 197 Mich App 467, 477; 495 NW2d 826 (1992). To the extent the circuit court issued a decision in this matter without the complete record, petitioner was deprived of his right to a meaningful review in the circuit

¹ The substitute judge acted on behalf of the presiding judge who was on vacation.

court. *Justewicz v Hamtramck Civil Service Comm*, 65 Mich App 555, 559-560; 237 NW2d 555 (1975).

We find no merit to respondents' claims that petitioner was not entitled to file a brief with the circuit court, or review the record of the commission's deliberations. Indeed, respondents are precluded from properly advancing this position because they stipulated to the contrary in the circuit court. *People v McCray*, 210 Mich App 9, 14; 533 NW2d 359 (1995); see also *Phinney v Perlmutter*, 222 Mich App 513, 537; 564 NW2d 532 (1997). In any event, contrary to respondents contention, petitioner's circuit court action was not one for superintending control, but rather, was an appeal as of right as provided by MCL 38.514(1); MSA 5.3364(1). *In re Payne*, 444 Mich 679, 687; 514 NW2d 121 (1994). Because the court rules permit the filing of briefs in an administrative appeal to circuit court, MCR 7.105(K), respondents' argument that petitioner was not entitled to file a brief in the circuit court is without merit.

Also, respondents have not shown that the Open Meetings Act, MCL 15.261 *et seq.*; MSA 4.1800(11) *et seq.*, precludes petitioner from reviewing the commission's record. MCL 15.267(2); MSA 4.1800(17)(2) does not apply to this case because that statute only addresses the disclosure of records from closed sessions to the general public. As MCL 38.514(1); MSA 5.3364(1) provides, the record in this case is sealed and is not generally available for public inspection, but it must be available for judicial review when an appeal is filed. Compare *Titus v Shelby Charter Twp*, 226 Mich App 611; 574 NW2d 391 (1997). Accordingly, respondents cannot deny petitioner access to the hearing transcript on the basis of the Open Meetings Act.

Because an in camera inspection of the sealed civil service commission record did not occur in accordance with the parties' stipulation, and because the parties did not file their briefs before the court made its ruling, we decline to consider petitioner's issue challenging the merits of the commission's decision. Instead, the matter is remanded to allow the parties to proceed in accordance with the prior stipulation.

The circuit court's opinion and order of May 26, 1998, is vacated and the matter is remanded for further proceedings consistent with this opinion. We do not retain jurisdiction.

/s/ William B. Murphy

/s/ Harold Hood

/s/ Jessica R. Cooper